**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.2955 OF 2006
Along with
CIVIL APPLICATION NO. 5013 of 2006

1. Sanjay Krishna Patil & Anr. .. Appellants (Orig.Plffs)

Vs

1.Municipal Corporation of Gr. Mumbai and Anr. .. Respondents (Orig.Defts)

Mr Yadunath Choudhari, for the appellants.
Mr J.J.Xavier, for the respondents-BMC.

**CORAM : D.B.BHOSALE,J.**
**DATE : 23.11.2006**

**PC:**

1. Heard Mr.Choudhari, learned counsel for the appellants and Mr.Xavier, learned counsel for the respondents.

2. This first appeal is directed against the judgment and order dated 12.10.2006, by which the suit instituted by the appellants-plaintiffs for declaration and perpetual injunction has been dismissed. By consent of the learned counsel for the parties, the appeal was heard for final disposal at the stage of admission. The appellants have placed on record all the relevant documents including the pleadings, notes of evidence, map/plan and the other documents relied upon before the trial court for my perusal.

3. In the suit, the appellants had sought a declaration that the notice dated 4.4.2001 issued under section 314 of the Mumbai Municipal Corporation Act, 1888, (for short, "the said Act") is illegal and bad in law and had further prayed for injunction restraining the respondents-defendants from demolishing the structure, situate at Survey No.148 (Part), CTS No.168 (Part), Jivlapada, near Tarkeshwar Mandir, Borivali (East), Mumbai-400 066 (for short, "the suit structure"). It appears that the appellants encroached upon the land and made unauthorised construction in the shape of hut. The respondent-corporation, therefore, had issued the notice under section 314 for evicting the appellants. Admittedly, the land on which the suit structure stand, was acquired by the respondents-Municipal Corporation and they had taken possession thereof on 17.6.1999. This factum has not been disputed by the appellants at all.

4. The submission of Mr Choudhari, learned counsel for the appellants, is two fold. Firstly, he invited my attention to the documents annexed to the appeal to contend that the appellants have been residing in the suit structure since last more than 30 years and it is tolerated structure and not liable to be demolished.

Secondly, he submitted that road/street is yet not constructed and hence the proceedings under section 314 of the said Act are illegal. In other words he submitted that the "street" contemplated by section 314, does not exist at all and, therefore, the provisions contained in the said section are not attracted.

5. The court below has considered the merits of the contentions, insofar as the existence of the suit structure is concerned, in proper perspective, and has rightly rejected the claim of the appellants that the suit structure exists since last 30 years and is tolerated by the policy. I perused all the documents and the evidence. No infirmity worth mentioning was either pointed out or could be noticed in the findings recorded by the court below. There is absolutely nothing on record in support of the appellants contention that suit structure exist since last 30 years and is tolerated. It would be advantageous if the observations made in paragraph 9 of the impugned judgment are reproduced to avoid repetiion. The relevant observations read thus :

> "It is pertinent to note that Plaintiff No.2 has not stepped into the witness

box. It is in the evidence of Plaintiff No. 1 Mr.Sanjay Patil (PW1) that he is in occupation of the suit premises for last more than 30 years as a tenant of

one Smt.Sabai Mura Rabari. There is absolutely nothing on record to show that Plaintiff is residing in the suit structure since last 30 years. The ration card (Exh.19) is issued in the year 2000. Moreover the ration card can not be used as an evidence to prove the residence. In short all the documents filed on record by the Plaintiff have not disclosed that Plaintiff is residing in the suit structure since last more than 30 years. Moreover, it is pertinent to note that there is no reference to Room No.814 in the ration card. Plaintiff No.1 has not filed the election identity card. The identity card which is in the name of wife of Plaintiff No.1 bears the address as G-4 Mora Sora Chawl, A.Jung Marg, Borivali (East), Mumbai 66. He has admitted that Mora Sora Chawl and Jivalpada area is different. In the cross examination it is brought on record that father of Plaintiff No.1 has constructed the suit structure. Moreover father of Plaintiff No.1 has not obtained the construction permission from defendant Corporation. It is pertinent to note that Plaintiff is a tenant in the suit premises. One Gulam Ali is the owner of the suit premises. There is no agreement between Plaintiff No. 1 and Gulam Ali about the suit premises. The rent receipts filed alongwith list Exh.17/5 are pertaining to Smt.Subai Pura Swari Chawl, House NO.2. He has also admitted that N.A.Order (Exh.22) is not pertaining to the suit structure. He has admitted that the structure is shown in Road widening and at present there are only two structures. Admittedly there were 28 structures. It is clear that the remaining 26 structures are demolished. It is admitted by the Plaintiff that remaining structures are demolished by the Corporation on 02/12/2004. The suit structure is constructed with tin sheet wall and A.C.sheet roof. It is suggested to the Plaintiff that the said structure is constructed in the year 2000. However, Plaintiff denied the

said suggestion."

6. Insofar as the second submission is concerned, in my opinion, it is covered by the judgment of the Supreme Court in Municipal Corporation of Gr.Bombay Vs. Premnagar Zopadpatti Committee Society and Anr, **1991 Supp (2) Supreme Court Cases 712.** In that case, similar contentions were advanced before the High Court and the High Court had granted interim injunction restraining the corporation from evicting the respondents from the land in dispute in the proceedings under sections 313 and 314 of the Act. While dealing with the appeal against the order of the High Court, the Supreme Court in paragraph 5 made the following observations:

> "5. After hearing learned counsel for the parties, we are of the opinion that the view taken by the High Court that the land was not a public place although it had been acquired for purpose, therefore no proceedings under Section 313 and 314 of the Act could be taken against the respondents is erroneous in law. The land which had been acquired for the public purpose by the Corporation is a public place and any encroachment made on that land by any person could be dealt with under Section 313 and 314 of the Act. In this view, we allow the appeals and set aside the order of the High Court."

7. It is thus clear that the land, which has been

acquired by the corporation for the purpose of the construction of the road, is a public place and the encroachment made thereon by the appellants could be dealt with under section 314 of the Act. In the circumstances, this appeal is dismissed in limine. As a consequence thereof, the civil application also stands dismissed.

(D.B.BHOSALE,J.)